

SEARCH AND SEIZURE — Inevitable Discovery — Revised 11/2009

The inevitable discovery rule allows illegally obtained evidence to be admitted when the prosecution demonstrates that the same evidence inevitably would have been discovered through a lawful means had the illegality not occurred. *Nix v. Williams*, 467 U.S. 431 (1984). The inevitable discovery exception is an extension of the independent source exception. They share the underlying rationale that, although the government should not profit from its illegal conduct, the government should not be put in a position that is worse than the position that it would have occupied had no misconduct occurred. *Id.*; *Murray v. United States*, 487 U.S. 533 (1988); *State v. Gulbrandson*, 184 Ariz. 46, 906 P.2d 579 (1995); *State v. Ault*, 150 Ariz. 459, 724 P.2d 545 (1986).

The Supreme Court applied the inevitable discovery exception in *Nix*, where the defendant murdered a young girl and left her body in a snowy pasture. Before the defendant was arrested, 200 volunteers began searching for the body. Officers arrested the defendant and transported him to a nearby town. The defendant's attorney was assured by police that no interrogation would take place until the defendant and the officer arrived at the station. Nevertheless, while in transit the arresting officer suggested that the defendant should divulge the location of the body because the little girl deserved a decent Christian burial. The defendant then said he would show them where the body was, and he led the officers to the victim's body. It was located within the area that the search team had planned to cover. *Id.* at 435-36.

The defendant moved to suppress the evidence of the body and the condition of the body as shown by the autopsy and post-mortem tests on the body. The defense

argued that this evidence was gained as the direct result of the defendant's statements, which were elicited in violation of his Sixth Amendment right to counsel. *Id.* at 436-37.

While the Court recognized that the officer clearly violated the Sixth Amendment when he questioned the defendant in the car, the Court nevertheless refused to exclude the evidence. The Court noted that "the vast majority of all courts, both state and federal, recognize an inevitable discovery exception to the exclusionary rule." *Id.* In a footnote, the Court stated that every federal appellate court having jurisdiction over criminal cases has adopted the inevitable discovery exception. *Id.* at 441 n.2. The Court held that simply establishing that evidence was obtained illegally does not end the inquiry:

If the prosecution can establish by a preponderance of the evidence, that the information ultimately or inevitably would have been discovered by lawful means -- here the volunteers' search -- then the deterrence rationale has so little basis that the evidence should be received. Anything less would reject logic, experience, and common sense.

Id. at 444 [footnote omitted]. The Court continued:

[I]f the government can prove that the evidence would have been obtained inevitably and, therefore, would have been admitted regardless of any overreaching by the police, there is no rational basis to keep that evidence from the jury in order to ensure the fairness of the trial proceedings. In that situation, the State has gained no advantage at trial and the defendant has suffered no prejudice. Indeed, suppression of the evidence would operate to undermine the adversary system by putting the State in a worse position than it would have occupied without any police misconduct.

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[W]hen, as here, the evidence in question would inevitably have been discovered without reference to the police error or misconduct, there is no nexus sufficient to provide a taint and the evidence is admissible.

Id. at 447.

Arizona recognizes the inevitable discovery doctrine. *State v. Rojers*, 216 Ariz. 555, 559, 169 P.3d 651, 655 (App. 2007). In Arizona, "illegally obtained evidence is

admissible '[i]f the prosecution can establish by a preponderance of the evidence that the illegally seized items or information would have inevitably been seized by lawful means" *Id. quoting Jones*, 185 Ariz. at 481, 917 P.2d at 210 (quoting *State v. Ault*, 150 Ariz. 459, 465, 724 P.2d 545, 551 (1986)); see also *State v. Paxton*, 186 Ariz. 580, 925 P.2d 721 (App. 1996); *State v. Castaneda*, 150 Ariz. 382, 724 P.2d 1 (1986). For example, illegally obtained evidence is admissible if the government can show that it would have inevitably discovered the evidence by following routine procedures. *State v. Prasertphong*, 206 Ariz. 70, 79, 75 P.3d 675, 684 (2003), *vacated on other grounds*, 124 S.Ct. 427 (2003); see also *State v. Rojers*, 216 Ariz. at 560, 169 P.3d at 656 (evidence admissible if it would have been discovered in an inventory search following standard procedures).

In *State v. Castaneda*, the Arizona Supreme Court held that although the defendant was coerced into telling police where the victim's body was, the evidence was admissible because the body inevitably would have been discovered as soon as it became light. 150 Ariz. at 388, 724 P.2d at 7. Similarly, in *State v. Lamb*, the court held that evidence obtained during an illegal pat down search was admissible because the defendant would have been arrested on independent grounds and evidence would inevitably have been discovered during a lawful search incident to arrest. 116 Ariz. at 138, 568 P.2d at 1036. In *State v. Davolt*, 207 Ariz. 191, 204, 84 P.3d 456, 469 (2004), however, the court held that the inevitable discovery doctrine did not cure the officers' three Fourth and Fifth Amendment violations, which led to a search of defendant's motel room. Even though the location of the room would have been discovered without the

constitutional violations, no information was adduced that the police would ever have discovered the evidence in the room lawfully, such as by obtaining a search warrant.

Arizona, however, does not apply the inevitable discovery exception when the illegal search invades the defendant's home. *State v. Ault*, 150 Ariz. 459, 724 P.2d 545 (1986). Without warrants, the police went to Ault's apartment and requested that he accompany them to the police station for questioning. Although they likely had probable cause, the officers did not place Ault under arrest. He agreed to accompany them, requesting only that he be given an opportunity to get dressed. The officers followed Ault into his apartment against his wishes, informing him that they were entering the apartment for their own protection. While inside, the officers saw several items of tangible evidence that they immediately recognized as incriminating, including a pair of muddy shoes matching shoeprints left at the scene. The officers seized the shoes and immediately took them back to the station. Later that afternoon, officers obtained a search warrant for Ault's apartment; this warrant would have allowed them to seize the shoes, had they not been seized earlier. The officers searched the apartment and found clothes matching the victim's description of her assailant's clothing. Ault was charged with burglary and child molestation. The court concluded that, even if the incriminating evidence would ultimately have been discovered by lawful means, the inevitable discovery exception did not apply because Article II, § 8 of the Arizona Constitution offered special protection for the privacy of the home, and a warrantless search of the home violated the Arizona Constitution.¹ *Id.* at 466, 724 P.2d at 552.

¹ Art. II, § 8 of the Arizona Constitution provides, "No person shall be disturbed in his private affairs, or his home invaded, without authority of law."